

ORDINANCE NO. _____, SERIES 2019

AN ORDINANCE AMENDING SECTION 123 OF THE LOUISVILLE/JEFFERSON COUNTY METRO CODE OF ORDINANCES APPLICABLE TO PAWNBROKERS AND REMOVING JUNK AND SECONDHAND DEALERS FROM SECTION 115 AND INCORPORATING IT INTO SECTION 123.

SPONSORED BY: PRESIDENT JAMES

WHEREAS, the General Assembly enacted House Bill 74 as legislation in 2018 that amended Kentucky Revised Statutes (“KRS”) 226.040, the subchapter entitled “Pawnbroker to keep register of loans and purchases -- State officers may inspect” (see attached House Bill 74);

WHEREAS, the now amended state law requires specific information of a pawnbroker’s register to be included on an Internet-based register; requires that the register be available to law enforcement personnel, that it contains a full description of property purchased or pawned; and that it requires secondhand merchandise sold to a pawnbroker to be held a minimum of 12 days before being resold;

WHEREAS, Louisville Metro Code of Ordinances (“LMCO”) § 123.06 governing the register of loans and purchases by pawnbrokers is now amended to comply with KRS 226.040;

WHEREAS, LMCO § 115.120-127 that governs the local business practices of Junk and Secondhand Dealers is similar in many respects to requirements laid out in LMCO Chapter 123 for Pawnbrokers;

WHEREAS, Louisville Metro seeks to update LMCO by combining the pawnbroker and second-hand junk dealers into the same LMCO chapter to provide a well-organized code of ordinances that will better serve the general public, including businesses

regulated by the LMCO and individuals interacting with said businesses, and government officers charged with enforcing the LMCO;

WHEREAS, the ability to exchange gift cards on the secondary market for money or other valuable consideration has increasingly resulted in the theft of said cards; and

WHEREAS, the inclusion of gift cards as regulated property will allow law enforcement to curtail theft and fraud associated with gift cards.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“COUNCIL”) AS FOLLOWS:

SECTION I: The title of LMCO Chapter 123 is hereby amended as follows with two subtitles appearing as (1) Pawnbrokers and (2) Junk, Scrap, Secondhand Dealers:

CHAPTER 123: REGULATIONS GOVERNING PAWNBROKERS AND JUNK, SCRAP, AND SECONDHAND DEALERS.

SECTION II: LMCO Chapter 123 is hereby amended to renumber the following sections:

Section 123.10 shall be re-numbered as Section 123.02;

Section 123.11 shall be re-numbered as Section 123.03;

Section 123.02 shall be re-numbered as Section 123.07;

Section 123.03 shall be re-numbered as Section 123.08;

Section 123.04 shall be re-numbered as Section 123.09;

Section 123.05 shall be re-numbered as Section 123.10;

Section 123.06 shall be re-numbered as Section 123.11;

Section 123.07 shall be re-numbered as Section 123.12;

Section 123.08 shall be re-numbered as Section 123.13; and

Section 123.09 shall be re-numbered as Section 123.14;

SECTION III: LMCO Chapter 123 is hereby amended to include the following sections as found in LMCO Chapter 115 and said sections from LMCO Chapter 115 are hereby deleted:

Section 115.120 shall be transferred to Section 123.01;

Section 115.121 shall be transferred to the newly created Section 123.21;

Section 115.122 shall be transferred to the newly created Section 123.22;

Section 115.123 shall be transferred to the newly created Section 123.23;

Section 115.124 shall be transferred to the newly created Section 123.24;

Section 115.125 shall be transferred to the newly created Section 123.25;

Section 115.126 shall be transferred to the newly created Section 123.26; and

Section 115.127 shall be transferred to the newly created Section 123.27;

SECTION IV: LMCO § 123.01 is hereby amended to include the following definition under ***REGULATED PROPERTY***:

(18) Gift cards, including, but not limited to those that can be used as a form of payment at convenience stores, gas stations, grocery stores, restaurants, retail stores, and online, or exchanged for money or other valuable consideration.

(~~18~~19) Regulated property does not include any of the following property:

(a) Motor vehicles dealt in by motor vehicle dealers or purchased fully in accordance with § ~~445.427~~123.27;

(b) Boats;

(c) Books, magazines, beta and VHS video tapes, and comic books;

(d) Glassware, objects d'art, or sports cards and sports memorabilia;

- (e) Furniture;
- (f) Refrigerators, stoves, washers, dryers and other similar major household appliances;
- (g) Property purchased at an auction;
- (h) Property purchased from another person, who is in a business, as described in § 445.124123.01;
- (i) Postage stamps, stamp collections and philatelic items;
- (j) Clothing;
- (k) Ferrous metals and nonferrous, including items listed in subsections (6) through (16) above, when purchased by a scrap processor and which items are in such condition that their highest and primary value is either in sale or transfer as scrap metal;
- (l) Nonferrous or ferrous metals purchased by a scrap processor from a manufacturing, industrial or other commercial vendor that generates such metals in the ordinary course of business; and
- (m) A total of five or less compact discs, digital video discs, Blu- Ray discs and/or video games purchased in any combination from a single seller in a 24-hour period.

SECTION V: LMCO § 123.03 is hereby amended as follows and LMCO §§ 123.04, .05, and .06 are included to pertain to licensing as set forth below:

§ 123.03 ~~LICENSING~~ LICENSE REQUIRED

~~(A) Any person who shall engage in the business of taking or receiving by way of pledge, pawn, or exchange, any goods, wares, or merchandise, or any personal property whatsoever, as security for the payment of money lent thereon, shall be deemed a pawnbroker and shall pay a minimum annual license fee of \$1,250 on or before July 15~~

~~of each year. The license shall be issued through Louisville Metro Government, Department of Codes and Regulations. The license shall not be issued until the Louisville Metro Police Department has completed a thorough background check to determine the person's criminal record and to ascertain whether there are outstanding warrants on the person.~~

~~—(B) Each pawnbroker shall post, in a conspicuous place within the pawnbroker's business location, the pawnbroker license issued by Louisville Metro Government.~~

~~—(C) No person shall maintain, operate or conduct business as a pawnbroker without a pawnbroker license issued in accordance with subsection (A).~~

~~—(D) Any license under this section may be denied, suspended, or revoked for one or more of the following reasons:~~

~~—(1) The applicant or licensee has failed to comply with one or more provisions of this chapter.~~

~~—(2) Fraud, misrepresentation, or bribery in securing or renewing a license.~~

~~—(3) Fraud, misrepresentation, or false statements made in the application and investigation for, or in the course of, the applicant's business.~~

~~—(4) The applicant is a fugitive or has been convicted of a crime in the nature of business or commercial fraud, extortion, or receiving stolen property within the last three years.~~

(A) It shall be unlawful for any pawnbroker, junk, scrap, and secondhand dealer to engage in business within Louisville/Jefferson County except when licensed as a pawnbroker or secondhand dealer as defined in § 123.01 and in compliance with the provisions of this chapter.

(B) Unless otherwise exempted, every pawnbroker and secondhand dealer, before commencing business within Louisville/Jefferson County, shall make application in writing and under oath to the Department of Codes and Regulations and shall pay the required license fees.

(D) Pawnbrokers and secondhand dealers shall be required to maintain a separate license for each business location.

(D) The Director of the Department of Codes and Regulations may set and enforce rules and regulations deemed necessary for the orderly and complete administration of this chapter which are not inconsistent with any of the provisions of this chapter. A copy of the administrative regulations as promulgated by the Director of the Department of Codes and Regulations shall be available for public inspection in the offices of the Department of Codes and Regulations.

(E) The Director of the Department of Codes and Regulations is authorized to establish and promulgate a reasonable schedule and classifications of fees for licenses and permits as shall be issued pursuant to this chapter.

(F) The license requirements of this chapter shall not be construed to apply to the following:

(1) Upon producing proof of certification of registration with the Department of Professional Licensing of the Public Protection Cabinet, Secondary metal recyclers certified under the provisions of KRS § 433.902 shall be exempt from the requirement to obtain a license with the Department of Codes and Regulations.

(2) No license is required for those persons operating yard sales, garage sales, or other similar types of activities from their own residentially zoned property, or from

property on which they legally reside or from property owned by a charitable organization. These activities must be temporary in nature and must comply with all Louisville Metro ordinance provisions and Land Development Code provisions. (See Land Development Code Section 4.4.4 Garage Sales)

(3) No license is required for any member or members of a religious, charitable, health, welfare, educational, political or youth service organization, who is acting as a peddler by selling or offering to sell goods or services, including secondhand goods, to raise funds for the work of such organization and for no other purpose. The Director of the Department of Codes and Regulations may require any organization or individual claiming exemption to appear and present evidence in support of said membership and purpose.

§ 123.04 LICENSE APPLICATION.

(A) Any person, firm, or corporation desiring to secure a license as a pawnbroker or secondhand dealer shall make written application, under oath, on a form provided by the Department of Codes and Regulations. Such application shall contain at least the following information:

(1) The name and permanent home address and telephone number and full local address and telephone number of the applicant.

(2) If not self-employed, the name, address and telephone number of the employer or parent organization the applicant is representing and copies of credentials or documents verifying that relationship.

(3) The nature or character of the goods, wares, merchandise or services to be offered by the applicant.

(4) The place or places where the applicant proposes to engage in business.

(5) A listing of all criminal convictions of the applicant for the past five years, and a listing of all primary residences for the past five years.

(6) A statement of whether applicant has previously been denied a license under this chapter or if applicant has had previous license suspended or revoked and, if so, the reasons or the circumstances surrounding the denial, suspension or revocation.

(7) Applicant must provide proof of his or her tax identification number from the Metro Revenue Commission.

(B) Each applicant shall be required to complete the entire application form and abide by any request for information made by the Department of Codes and Regulations under this chapter. The failure to complete the form and provide all requested information may result in denial of the license.

(C) It shall be unlawful for any individual to intentionally provide false information or to intentionally omit requested information on an application for any license or permit governed by this chapter.

(D) Unless otherwise exempted, all applications shall be accompanied with the required fee(s) as specified in the schedule of fees established by the Director of the Department of Codes and Regulations.

§ 123.05 LICENSE APPLICATION REVIEW AND GENERAL STANDARDS.

(A) License Application Review:

(1) Upon receipt of such license application, the Director of Department of Codes and Regulations shall refer the application to the Louisville/Jefferson County Metro

Revenue Commission for its certification that applicant is in compliance with the occupational license tax registration and filing requirements.

(2) The Director of the Department of Codes and Regulations has the authority to deny or revoke any license if there is:

(a) A history of criminal convictions provided pursuant to LMCO § 123.04(6) demonstrating a proclivity toward crimes of a pecuniary nature,

(b) The discovery of any legitimate reason that the applicant presents a risk to citizens if permitted to engage in activities as a pawnbroker or secondhand dealer, or

(C) Any nonpayment of any civil penalties for previous violations of this chapter.

(B) General Standards for Licenses:

(1) No license shall be transferable nor shall such license authorize the activities licensed by any person other than the person to whom it is issued.

(2) Every person to whom a license is issued shall conform at all times with all applicable Louisville Metro Governmental requirements, including without limitation, public health and safety ordinances and regulations; local zoning codes and regulations; local occupational license tax ordinances and regulations; and any other applicable regulation or code provisions.

(3) Every person to whom a license is issued shall at all times while engaged in business have the applicable license in their possession or in a conspicuous place within the licensee's business location and shall produce the same at the request of any Louisville Metro official or at the request of any individual to whom the licensee is exhibiting his or her goods or selling or attempting to sell same.

(4) Licenses issued under this chapter shall be valid for the time period specified thereon. Renewal shall be required upon expiration of said license if the applicant wishes to continue such activity.

(5) Issuance of a license under this chapter shall not excuse any license holder from compliance with any other applicable ordinance or law.

§ 123.06 LICENSE REVOCATION OR SUSPENSION.

(A) A license issued pursuant to this chapter may be suspended or revoked by the Director of the Department of Codes and Regulation subject to appeal pursuant to this section. A license may be suspended or revoked for the following reasons:

(1) Fraud, misrepresentation or false statement contained in the application for a license.

(2) Fraud, misrepresentation or false statement made in connection with the business of acting as a pawnbroker or secondhand dealer.

(3) The applicant is a fugitive or has been convicted of a crime in the nature of business or commercial fraud, extortion, or receiving stolen property within the last three years.

(4) Any facts of conditions which would justify the denial of the original application.

(5) Conducting the business of a pawnbroker or secondhand dealer under this chapter in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(B) This section shall be self-executing and the suspension or revocation shall be effective immediately. The Director of the Department of Codes and Regulation shall give

notice of the suspension or revocation of the license and sufficient notice shall be given if either hand-delivered or mailed to the licensee at his/her local address as listed on the licensee's application.

(C) It is unlawful for any person whose license has been suspended or revoked to continue in the business of a pawnbroker or secondhand dealer or to keep the license issued to him/her in his/her possession and control, and the same shall immediately be surrendered to the Director of the Department of Codes and Regulations or his/her designee.

SECTION VI: The General Assembly enacted legislation during the 2018 Session that amends KRS § 226.040. As a result, the Council hereby amends the LMCO § 123.09 entitled "Register of loans and purchases" as follows:

(A) Every pawnbroker shall keep a register of all loans and purchases of all articles by the pawnbroker from the general public effected or made by him or her. The register shall:

(1) Be reported to an online, Internet-based transaction recording service accessible to law enforcement agencies by 11 am the following day;

(2) sShow the dates and the amounts of all loans or purchases by the pawnbroker from the general public, and the names and:

- a. A driver's license number;
- b. Another state or federally issued picture identification card number; or
- c. If the identification specified in subparagraphs (1) or (2) of this paragraph is not available, a Social Security number may be accepted of all persons who have left any property that has been pawned or sold.;

~~on deposit as collateral security, or as a delivery or sale. Opposite the names and dates shall be written in plain hand a full description of all property purchased or received on deposit as collateral security, the time when the loan falls due, the amount of purchase money, the amount loaned and the interest charged.~~

(3) At all times be available ~~open~~ to the inspection of any law enforcement officer of this state when in the discharge of his or her official duty; and.

(4) Contain a full description of all property purchased by the pawnbroker from the general public or received on deposit as collateral or security. Pawnbrokers and secondhand dealers shall digitally photograph all property pawned, sold, traded, or consigned regardless of the lack of a law enforcement investigation. For purposes of this paragraph, "full description" includes but is not limited to:

a. Make;

b. Model;

c. Serial Number

d. Color;

e. Size;

f. Manufacturer;

g. Vintage; and

h. Distinguishing marks or characteristics.

(B) When secondhand merchandise is sold to a pawnbroker, the merchandise shall be held for a minimum of twelve (12) days before being resold.

(C) Prior to the release of property to a representative of law enforcement, the law enforcement representative shall provide to the pawnbroker a case report or other documentation that the item has been reported as stolen.

SECTION VII: LMCO § 123.13(B) and (C) are hereby amended as follows:

(B) The report shall include the following:

(1) Date of the purchase, pawn, consignment or trade;

(2) The ~~Full~~ name of the person or persons who sold, pawned, consigned or traded goods;

(3) ~~his or her~~ Address (to include city, state and zip code);

(4) Telephone number;

(5) Date of birth;

(6) Gender;

(7) Race;

(8) Hair color; and

(9) Eye color.

(C) The transmitted report shall include an electronic copy of a valid driver's license which contains the name, photograph, digital thumb print, and signature of the seller, including the information obtained from scanning the bar code on the back of the valid driver's license~~a government-issued photo identification~~ and a digital photograph of the seller taken at the time of the transaction. The pawnbroker or secondhand broker must obtain the driver's license information, digital fingerprint, and digital photograph of the seller for each new transaction regardless of the individual already having an existing file with the pawnbroker or secondhand broker. ~~If the pawnbroker has a copy of the seller's~~

~~valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser references the number on the identification document in the register at the time of each purchase. If a valid driver's license is unavailable, the pawnbroker shall obtain a clear and readable copy of a US government-issued identification card, a digital signature, and a digital right thumb print, however, if unavailable, then a digital left thumb print of the person or persons.—Thumbprints can continually be referred to provided it is kept on file after an initial transaction.~~

SECTION VIII: LMCO § 123.21 is hereby amended as follows:

Every person, secondary metals recycler, or mobile dealer as defined in § ~~123.01~~145.120, who are engaged in, conducting or carrying on any business in Louisville Metro wherein he or she regularly purchases, in the course of his or her business, regulated property and/or restricted metals from another person shall comply with all the provisions of ~~§§ 123.22-123.27~~this subchapter. ~~This subchapter~~ these sections shall not apply to pawnbrokers.

SECTION IX: LMCO § 123.22(A) is hereby amended as follows:

Every person, secondary metals recycler, or mobile dealer as defined in § ~~123.01~~145.120, who are carrying on any business as set forth in § ~~123.21~~145.121, above, shall keep a transaction record, in plain, legible printed English text, for each purchase of regulated property and/or restricted metals, with the following information downloaded by 11 am the following day to be reported to an online internet-based transaction recording service accessible to law enforcement:

(1) Information on the regulated property and/or restricted metals purchased:

(a) The date when the property was received and bought;

(b) The purchase price;

(c) A digital photograph of the property; and

(d) A description of the property that is accurate as practicable in the usage of the

trade, to include if applicable:

i. Make;

ii. Model;

iii. Serial number;

iv. Color;

v. Size;

vi. Manufacturer;

vii. Vintage; and

viii. Distinguishing marks or characteristics to include engraved numbers,

words, or initials;

(2) Information on the seller of the regulated property and/or restricted metals purchased:

(a) A digital copy of the seller's state or federally issued photo identification;

(b) If not available from the aforementioned photo identification card, the following

personal information from the seller must be supplemented:

i. Full Name;

ii. Signature;

iii. Address (to include city, state, and zip code);

iv. Telephone number;

v. Date of birth;

vi. Gender;

vii. Race;

viii. Hair color; and

ix. Eye color;

(c) A digital thumb print. The digital thumb print should be made from the right hand unless the right hand is unavailable in which case the left hand thumb should be provided;

(3) Information on the purchaser of the regulated property and/or restricted metals, including the purchaser's name, and business, if applicable.

~~(1) The name of the person on behalf of the business, as set forth in § 115.121, above, who actually made the purchase;~~

~~—(2) The name of the person or persons from whom any regulated property is purchased;~~

~~—(3) The residence or place of business of such person or persons from whom the regulated property is purchased;~~

~~—(4) An electronically retained copy of a valid driver's license which contains the name, photograph, and signature of the seller, including the information obtained from scanning the bar code on the back of a government-issued photo identification of the person or persons from whom any regulated property is purchased; if the purchaser has a copy of the seller's valid photo identification on file, it shall not be necessary for the purchaser to make another copy of the identification document for each purchase if the purchaser~~

~~references the number on the identification document in the register at the time of each purchase;~~

~~—(5) If a valid driver's license is unavailable, a copy of a government-issued identification card and a right thumb print, however, if unavailable, then a left thumb print of the person or persons from whom any regulated property is purchased, along with his or her address, city, state and zip code, his or her sex, race, hair color, eye color, his or her date of birth and his or her signature from; such thumbprint can continually be referred to provided it is kept on file after the initial transaction with such person;~~

~~—(6) The date when the property was received and bought;~~

~~—(7) A full description of the items purchased in the usage of the trade; and~~

~~—(8) If any item of regulated property purchased has engraved thereon any numbers, words, or initials, other than the name of the manufacturer or maker of the item, or contains any setting of any kind, the description recorded on the transaction record shall show the numbers, initials or other unique identifying marks.~~

SECTION X: LMCO § 123.24 is hereby amended as follows:

(A) ~~The Louisville Metro Police Department~~ Any Law Enforcement Agency may examine during regular business hours the books of any person, secondary metals recycler, or mobile dealer as defined in § ~~445.420~~123.01, who are doing business as set forth in § ~~445.421~~123.21, above, or his or her clerk, if they deem it necessary when in search of stolen property. Any person who has in his or her possession a receipt from selling regulated property to a person carrying on a business as described in § ~~445.421~~123.21, above, shall allow ~~the Louisville Metro Police Department~~ a Law Enforcement Agency to examine regulated property purporting to be sold by that receipt.

No property shall be removed from the possession of any person doing business as set forth in § ~~445.124~~123.21, above, without due process of law as required by the existing laws of the Commonwealth of Kentucky, or the laws and ordinances of the Louisville/Jefferson County Metro Government.

(B) If a Law Enforcement Agency has probable cause to believe that an item in the possession of a person, secondary metals recycler, or mobile dealer as defined in § 123.20, who are carrying on any business as set forth in § 123.21 has been stolen and a Law Enforcement Agency provides notification to refrain from selling the item, the item shall not be sold, modified, altered, destroyed, or removed from the premises. The order to hold shall expire 90 days after receipt of a verbal notification through a phone call or by electronic email notification from any Law Enforcement Agency unless extended by agreement or modified by an order from the court.

(CB) The Louisville Metro Police Department shall implement and maintain an on-line reporting database system to which secondary metals recyclers and mobile dealers are required to report the purchases of regulated property and restricted metals as set forth in § ~~123.22~~145.122. Information reported by secondary metals recyclers and mobile dealers will be recognized as confidential or proprietary information for the purpose of investigating and prosecuting theft and/or other violations of the law.

SECTION XI: LMCO § 123.25 is hereby amended as follows:

Gold, silver, precious metals regulated property and/or restricted metals purchased by a person, secondary metals recycler, or mobile dealer as defined in § ~~123.01~~445.120, who are carrying on a business as described in § ~~123.21~~445.124, above, shall not be sold, modified, altered or destroyed for a period of twelve (12) ~~ten~~ calendar days after the date

of purchase by a person, secondary metals recycler, or mobile dealer who are carrying on a business as described in § ~~123.21-115.124~~. The property purchased must be kept in its original form, uncommingled, along with a copy of the transaction record, as set forth in § ~~123.22-115.122~~, on the premises of the business location during the holding period for purposes of inspection, if necessary, as provided by this subchapter. This section shall not apply to ferrous metals, nonferrous metals, and items listed in subsection (17) of the definition for "regulated property" in § ~~123.01-115.120~~.

SECTION XII: LMCO § 123.99 is hereby amended as follows:

(A) Except for violations of § 123.21 and § 123.22, Any violation of Chapter 123 shall be classified as a civil offense and shall be enforced through the Code Enforcement Board as provided in §§ 32.275 et seq. or as it may be amended. The civil penalty for violations of this section are set forth below. Each day a violation continues shall be a separate violation of this section.

(B) Any pawnbroker who violates any of the provisions of §§ ~~123.0204, 123.0305, 123.0406, 123.0507, 123.0608, or 123.0709, 123.0911, or 123.11~~ shall be fined not less than ~~\$50~~\$100, nor more than ~~\$500~~\$1,000.

(C) Any pawnbroker who violates any of the provisions of § ~~123.0810~~ shall be fined not less than ~~\$200~~\$100, nor more than ~~\$100~~\$1,000.

(D) Any licensee who violates § 123.03 shall be fined not less than \$100, nor more than \$1,000.

Subsection 115.999(C) shall be transferred to the newly created Subsections 123.99(E) and (F) and shall read as follows:

(E) Any person, secondary metals recycler, or mobile dealer as defined in § 123.01, who violates the provisions of § 123.21 shall be fined not less than \$100 nor more than \$1,000 for each offense, or imprisoned not more than 50 days, or both. Each day such violations continue, shall constitute a separate offense.

(F) Any person, secondary metals recycler, or mobile dealer as defined in § 123.01, who shall neglect or refuse to comply with or violates the provisions of § 123.22 shall be fined not less than \$100 nor more than \$1,000 for each offense, or imprisoned not more than 50 days, or both. Each day such person, firm, or corporation shall neglect or refuse to comply with or violate any of the provisions of that section shall constitute a separate offense.

SECTION XIII: This Ordinance shall take effect 90 days after its passage and approval.

H. Stephen Ott
Metro Council Clerk

David James
President of the Metro Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____